SATHASK REALTY SDN. BHD.

v.

THE SULTANATE OF PAHANG & ANOR.

HIGH COURT MALAYA, KUANTAN
DATO' ARIFFIN ZAKARIA J
[ORIGINATING MOTION NO. 25-6 OF 1992]
19 DECEMBER 1994

***LAND LAW**: Sultanate land - Leasing of - Land leased to a corporate body - Whether valid - Sultanate Land Enactment (Pahang) 1919.*

***INTERPRETATION**: Whether "persons" in s. 6(i)(b) of Sultanate Land Enactment (Pahang) 1919 meant only natural persons - Whether included a corporate body - Interpretation Acts 1948 & 1976*

***WORDS AND PHRASES**: "persons" - Section 6(i)(b) Sultanate Land Enactment (Pahang), 1919.*

This was an application for an order of certiorari to quash the decision of the second respondent, the Special Tribunal constituted pursuant to s.7 of the Sultanate Land Enactment (Pahang) 1919 (the Enactment), ruling that the leasing out of a piece of Sultanate land by the late Sultan of Pahang to the applicant in 1964 was *ultra vires* the Enactment, and so was the subsequent sub-lease of the said land by the applicant. The ruling was made following a claim on the land by the first respondent.

Before the learned Judge the primary issues that arose were:

1. Whether the grant of the lease by the former Sultan of Pahang was within the power conferred by s. 6(i)(b) of the Enactment under which it was purported to have been made.

2. Whether the second respondent was wrong in law in holding that the word "persons" in s. 6(i)(b) of the Enactment meant only natural person to the exclusion of body corporate like the second respondent.

Held:

[1] On perusing s. 6 (iii) of the Enactment it is clear that that section did not affect sub-leases. The whole of s. 6 (iii) is focussed on sale, transfer or charge of a right or interest in any lease of Sultanate lands. A sub-lease cannot be construed to be in the nature of a sale, transfer or charge.

[2] From the provisions of s. 6(i)(a) & (b) of the Enactment it may be said that Sultanate lands may be leased out to "Malay subjects" of the Ruler of Pahang and to "persons not being Malay subjects of the said Ruler". As the word "persons" is not defined by the Enactment, the expression should be given the meaning assigned to it by Part II of the Interpretation Acts 1948 and 1967 which defines "person" as "includes any body of persons, corporate or unincorporate". The expression "persons" in the said section does therefore include a body corporate and hence the applicant.

[3] It is fallacious to say that the word " subject" appearing in ss. 4, 5 & 6 of the Enactment has the effect of narrowing the meaning of the expression "persons" found in s. 6(i)(b) thereof. If the legislature intended to restrict the leasing of Sultanate lands to natural persons so that only natural persons could derive benefits from leases of such land, the legislatutre could have expressly provided to that effect in clear words. On the contrary the legislature had chosen to use the general expression "persons" in the Enactment without assigning any special meaning to it.

Therefore in the circumstances the broader meaning assigned to it in Part II of the Interpretation Acts 1948 and 1967 must apply.

[4] The second respondent could not have come to its decision herein had it rightly interpreted the relevant statutory provisions. Misinterpretation of a statute clearly constitutes an error of law. And where it appears that the determination or decision of an inferior tribunal is wrong in law, certiorari to quash it will be granted. In this case the second respondent had clearly committed an error of law which is apparent on the face of the records. Their decision is therefore quashed.

[Application allowed. Decision of second respondent quashed]

Cases referred to:
R. v. Nat Bell Liquors Ltd. [1922] 2 AC 128 pp. 155, 156 PC ***(refd)***
R. v. Northumberland Compensation Appeal Tribunal, ex parte Shaw [1952] i KB 338 CA ***(refd)***
Walsall Overseers of the Poor of Walsall v. London and North Western Railway Co. [1878] 4 AC 30, HL ***(refd)***
Mohamed v. Commissioner of Lands & Mines, Terengganu & Anor. [1968] 1 MLJ 227 ***(refd)***

Legislation referred to:
Sultanate Land Enactment 1919 (Pahang), ss. 4, 6
Rules of the High Court, O. 57
Interpretation Acts 1948 and 1967

Other sources referred to:
Halsbury's Laws of England, 4th Edn. Vol. 1 para. 63

For the applicant - Chin Yew Ming; M/s. Allen & Gledhill
For the 1st respondent - Sabarina Laila Mohd Hashim; M/s. Bahari Choy & Nongchik
For the 2nd respondent - Abdul Rahim Uda; Legal Adviser, State of Pahang

JUDGMENT

Ariffin Zakaria J:

This is an application for an order of certiorari to quash the decision of the 2nd respondent with regard to a claim made by the 1st respondent in relation to a parcel of land held under CT No. 5941, Lot No. 4821, Mukim of Kuala Kuantan (hereinafter referred to as "the demised land") . The facts leading to this application may be stated as follows:

The demised land was initially leased out to the applicant for a term of 50 years with effect from 1 July 1964 by the late Sultan Abu Bakar of Pahang. This initial lease was then substituted with a new and supervening lease for a term of 99 years with effect from 1 July 1964. The applicant then sub-leased certain portion of the demised land.

On 14 May 1985, the 1st respondent instituted a claim before the 2nd respondent claiming *inter alia*, that

(i) By virtue of ss. 4 and 6, the Sultanate Land Enactment 1919 (Pahang) (hereinafter referred to as "The Enactment") the lease of the demised land to the applicant was invalid on the ground that the applicant is not a natural person nor a subject of the Ruler of the State;

(ii) Further or in the alternative, the applicant has been in breach of Clause 2(c) of the lease and the provisions of ss. 4 and 6 of the Enactment in that the applicant had purported to create a trust and sub-leases over the demised land without the corresponding written consent of the Menteri Besar.

The applicant raised a preliminary issue for the decision of the 2nd. respondent as to whether or not the demised land comprised or part of the Sultanate lands. The 2nd respondent answered the preliminary issue in the affirmative and the matter then proceeded on with regard to the main issue.

After hearing Counsel for the 1st respondent and the applicant, the 2nd respondent in its decision dated 17 December 1991 held that:

(i) the lease of the demised land by the then Ruler of the State of Pahang is null and void for the following reasons:

> The word "subjects" appearing in s. 6(i) (b) (as well as s. (i) (a)), to my mind restrict the meaning of the word "persons" to mean only natural persons who are not Malay subjects of the Ruler and thus, as the lessee, Sathask Realty Sdn. Bhd., is a company, it cannot be holding a lease over any Sultanate land as it is not a natural person, and thus the granting of the Head Lease to Sathask Realty Sdn. Bhd. is *ultra vires.*

(ii) as the head lease is *void ab initio*, the sub-lease created thereunder are accordingly void;

(iii) the creation of the sub-leases also contravenes s. 6(ii) of the Enactment as there is no evidence of the written permission of the Menteri Besar had been obtained prior to the creation of the sub-leases.

The applicant is dissatisfied with the decision of the 2nd respondent and sought to have the decision quashed by this Court on the grounds as appearing in the statement filed pursuant to O. 57 of the Rules of the High Court (Encl. (1C).

In short, the applicant contended that the decision of the 2nd respondent was wrong in law in holding that the word "persons" found in s. 6(i) (b) of the Enactment to mean only natural person to the exclusion of body corporate like applicant. Secondly the applicant also contended that the 2nd respondent had misconducted itself in holding that the sub-lease contravenes s. 6 (iii) of the Enactment when this was not an issue raised by the 1st respondent in their claim.

With regard to the issue of sub-leases the 2nd respondent in its decision said that:

> ...the creation of the sub-leases also contravenes s. 6(iii) of the Sultanate Land Enactment 1919 which provides that no right or interest in any lease of Sultanate lands or any portion of it can be leased without the written permission of the Ruler and the Menteri Besar..., I find that there is no evidence to show that the written permission of the then Menteri Besar was ever obtained when the sub-leases were created.

On perusing s. 6 (iii) of the Enactment, with respect to the 2nd respondent, I fail to find how s. 6 (iii) could in any manner affect sub-leases. As I see it, the whole provisions of s. 6 (iii) is focussed on sale, transfer of charge of a right or interest in any lease of Sultanate lands. I could not see how a sub-lease could be construed to be in the nature of a sale, transfer or charge.

In my view if there is anything that governs the creation of a sub-lease it must be clause 2(c) of the lease agreement which provides:

> The Lessor hereby convenents with lessee as follows:
>
> (c) To consent to and permit the lessee to assign sub -lease or part with the possession of the demised land thereof to any respectable and responsible company person or persons for the residue of the term hereby granted provided always that the written consent of the Menteri Besar is first had and obtained. Such permission shall not be unreasonally withheld.

Under clause 2(c), it appears that the lessee is given the right to grant sub-lease in respect of demised land subject to the consent of the Menteri Besar. The 2nd respondent has found that the applicant had sub-leased portions of the demised land without the prior written consent of the Menteri Besar. Thus, the 2nd respondent held that the applicant was in breach of the express stipulations as provided in clause 2(c) of the lease agreement. However, having found that the applicant had been in breach of the express conditions of the lease, the 2nd respondent did not go further to determine what is the effect of such breach, if any, on the lease. The 2nd respondent, in conclusion, instead went on to say that:

> ...since the head lease has been entered into by both parties on a mistake of law, I find that it would be just and equitable that the claimant pay back the portion of the premium which corresponds to the unexpired term of the lease and also pay compensation for whatever improvement the lessee that is Sathask Realty Sdn. Bhd. can prove to have been effected by him to the land.

On that premise, Counsel for 1st and 2nd respondents contended that the issue whether there had been a breach of the express terms of the lease or not should not be in issue before this Court. After a careful consideration of their submissions, I am in complete agreement with them. Therefore, I do not propose to go into that issue in considering this application.

Thus, the single issue before this Court, is whether the grant of the lease by the former Sultan of Pahang was within the power conferred by s. 6(i) (b) of the Enactment under which it was purported to have been made. I shall now turn to that issue.

Basically under the Enactment all Sultanate lands "shall be vested in and be and remain the property of the Ruler for the time being of the State of Pahang. (See s. 3). However, the Ruler may, subject to restrictions prescribed by the Enactment, deal with the said land. With regard to leases, the relevant provisions would be s. 6 (i) (a) and (b) of the Enactment which provides as follows:

> 6(1) The Sultanate lands or portions thereof may form time to time be leased
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> (a) by writing under the hand of the Ruler or the State to **Malay subjects** of the said Ruler, or
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> (b) by writing under the hand of the ruler of the state and of the Menteri Besar to **persons** not being Malay subjects of the said Ruler, for any term not exceeding 99 years.

(The emphasis are mine).

From the above provisions, it may be said that Sultanate lands may be leased out to "Malay subjects" of the Ruler of Pahang and to "persons not being Malay subjects of the said Ruler". The word "Malay" is defined in s. 2 of the Enactment which states that every Malay born within the State shall be deemed to be a subject of the Ruler of the State. (See paragraph (b) of s. 2). Some difficulties had arisen with regard to the interpretation of s. 6 (i) (b) of the Enactment pertaining to the meaning of the expression "persons: obtaining therein. It was contended on behalf of the applicant that the said expression should include a body corporate or unincorporate. The respondents on the other hand argued that it should be confined to natural person. This question is crucial to the applicant herein being a company incorporated under the Companies Act. The applicant contended the the expression "person" should be given the meaning as defined in the Part II of Interpretation Acts 1948 and 1967 which defines "persons" as "includes any body of persons, corporate or unincoporate". Both the respondents urged the Court to adopt

the narrower meaning of the word in the context of the provisions of the Enactment. It is contended on their behalf that, in the Enactment, in particular ss. 4, 5 and 6, the repetitive use of the word "subject" strongly suggest that the intention of the legislature was to confine the meaning of the expression "persons" to only natural person and not to a body of persons, corporate or unincorporate.

As stated in Part II of the Interpretation Acts 1948 and 1967, the words and phrases as defined in the Acts shall have the meanings assigned to them unless there is something in the subject or context inconsistent with such construction or unless it is otherwise defined by a given statute. Therefore, the question one should ask in this case is whether there is anything repugnant or inconsistent within the context of the Enactment which militates against the adoption of the meaning as provided in Part II of Interpretation Acts, 1948 and 1967. With respect I find none. On the contrary, in the context of s. 6 of the Enactment, I am of the view that the expression "persons" should be given the broader meaning as defined in the Interpretation Acts 1948 and 1967. For it is fallacious to say that the word "subject" appearing in ss. 4, 5 and 6 has the effect of narrowing the meaning of the expression "persons" as found in s. 6 (i)(b) of the Enactment. This becomes apparent if one were to ask question: "Is a body of persons, corporate or unincorporate, a person not being a Malay subject of the Ruler of Pahang?" I am sure the answer to that is in the affirmative. That being so, how could one then say that the expression "persons" in the said s. 6(i)(b) of the Enactment does not include a body corporate.

As for the argument of the respondents that, it is the intention of the legislature to restrict the leasing of Sultanate lands to natural persons so that only natural persons could derive benefit form leases of such land, my short answer to that is: if it so intended the legislature could have expressly provided to that effect in clear words. On the contrary, the legislature had chosen to use the general expression "persons" in the Enactment without assigning any special meaning to it, therefore, in the circumstances, the meaning assigned to it in Part II of the Interpretation Acts 1948 and 1967 should apply.

From the ground of decision of the 2nd respondent I am satisfied that the 2nd respondent could not have come to that decision had it rightly interpreted the relevant statutory provisions. Misinterpretation of a statute or any legal document or a rule of common law clearly constitutes an error of law. (See **Halsbury's Laws of England** (4th Edition) Vol. 1 paragraph 63). An where upon the face of the proceedings themselves, it appears that the determination or decision of an inferior tribunal is wrong in law, certiorari to quash it will be granted. (See *R. v. Nat Bell Liquors Ltd.* [1922] 2 AC 128 at 155, 156 PC, *R. v. Northumberland Compensation Appeal Tribunal, ex parte Shaw* [1952] i KB 338 CA; *Walsall Overseers of the Poor of Walsall v. London and North Western Railway Co.* [1878] 4 Appeal Cases 30, HL). In the local case of *Mohamed v. Commissioner of Lands & Mines, Terengganu & Anor.* [1968] 1 MLJ 227 the Federal Court at page 230 stated:

> In the case of *R v. Northumberland Compensation Appeal Tribunal*, Denning LJ said at page 171:
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> > If the tribunal does state its reason, and those reasons are wrong in law, certiorari lies to quash the decision.

I am satisfied that, in this case the 2nd respondent had committed an error of law which is apparent on the face of the record. I, therefore, quash the decision of the 2nd respondent. The 1st respondent to pay to the applicant costs both before the tribunal and before this Court to be taxed by the SAR.